

UNITED STATES DISTRICT COURT

for the

Eastern District of Wisconsin

Milwaukee Division

U.S. DISTRICT COURT
EASTERN DISTRICT-WI
FILED

2020 JAN -4 P 4: 04

CLERK OF COURT

David C. Davis

Case No.

21-C-0016

(to be filled in by the Clerk's Office)

Plaintiff(s)

(Write the full name of each plaintiff who is filing this complaint. If the names of all the plaintiffs cannot fit in the space above, please write "see attached" in the space and attach an additional page with the full list of names.)

-v-

Jury Trial: (check one) ☒ Yes ☐ No

Robert Wilke
Secretary of Veterans Affairs

Defendant(s)

(Write the full name of each defendant who is being sued. If the names of all the defendants cannot fit in the space above, please write "see attached" in the space and attach an additional page with the full list of names.)

COMPLAINT FOR EMPLOYMENT DISCRIMINATION

I. The Parties to This Complaint

A. The Plaintiff(s)

Provide the information below for each plaintiff named in the complaint. Attach additional pages if needed.

Name	David C. Davis
Street Address	267 Edgerton Road
City and County	Albion, Dane County
State and Zip Code	Wisconsin 53534
Telephone Number	(414) 491-5667
E-mail Address	dave_davis@charter.net

B. The Defendant(s)

Provide the information below for each defendant named in the complaint, whether the defendant is an individual, a government agency, an organization, or a corporation. For an individual defendant, include the person's job or title (if known). Attach additional pages if needed.

Defendant No. 1

Name	Robert Wilke
Job or Title <i>(if known)</i>	Secretary of Veterans Affairs
Street Address	810 Vermont Avenue, NW
City and County	
State and Zip Code	Washington D.C. 20420
Telephone Number	(202) 461-4064
E-mail Address <i>(if known)</i>	

Defendant No. 2

Name	
Job or Title <i>(if known)</i>	
Street Address	
City and County	
State and Zip Code	
Telephone Number	
E-mail Address <i>(if known)</i>	

Defendant No. 3

Name	
Job or Title <i>(if known)</i>	
Street Address	
City and County	
State and Zip Code	
Telephone Number	
E-mail Address <i>(if known)</i>	

Defendant No. 4

Name	
Job or Title <i>(if known)</i>	
Street Address	
City and County	
State and Zip Code	
Telephone Number	
E-mail Address <i>(if known)</i>	

C. Place of Employment

The address at which I sought employment or was employed by the defendant(s) is

Name	VA Regional Office
Street Address	5400 West National Avenue
City and County	Milwaukee, Milwaukee County
State and Zip Code	Wisconsin 53214
Telephone Number	(414) 902-5095

II. Basis for Jurisdiction

This action is brought for discrimination in employment pursuant to *(check all that apply)*:

☐ Title VII of the Civil Rights Act of 1964, as codified, 42 U.S.C. §§ 2000e to 2000e-17 (race, color, gender, religion, national origin).

(Note: In order to bring suit in federal district court under Title VII, you must first obtain a Notice of Right to Sue letter from the Equal Employment Opportunity Commission.)

☒ Age Discrimination in Employment Act of 1967, as codified, 29 U.S.C. §§ 621 to 634.

(Note: In order to bring suit in federal district court under the Age Discrimination in Employment Act, you must first file a charge with the Equal Employment Opportunity Commission.)

☐ Americans with Disabilities Act of 1990, as codified, 42 U.S.C. §§ 12112 to 12117.

(Note: In order to bring suit in federal district court under the Americans with Disabilities Act, you must first obtain a Notice of Right to Sue letter from the Equal Employment Opportunity Commission.)

☐ Other federal law *(specify the federal law)*:

☐ Relevant state law *(specify, if known)*:

☐ Relevant city or county law *(specify, if known)*:

III. Statement of Claim

Write a short and plain statement of the claim. Do not make legal arguments. State as briefly as possible the facts showing that each plaintiff is entitled to the damages or other relief sought. State how each defendant was involved and what each defendant did that caused the plaintiff harm or violated the plaintiff's rights, including the dates and places of that involvement or conduct. If more than one claim is asserted, number each claim and write a short and plain statement of each claim in a separate paragraph. Attach additional pages if needed.

A. The discriminatory conduct of which I complain in this action includes *(check all that apply)*:

☒

Failure to hire me.

☐

Termination of my employment.

☐

Failure to promote me.

☐

Failure to accommodate my disability.

☐

Unequal terms and conditions of my employment.

☐

Retaliation.

☐

Other acts *(specify)*: _____

(Note: Only those grounds raised in the charge filed with the Equal Employment Opportunity Commission can be considered by the federal district court under the federal employment discrimination statutes.)

B. It is my best recollection that the alleged discriminatory acts occurred on date(s)

April 2018

C. I believe that defendant(s) *(check one)*:

☒

is/are still committing these acts against me.

☐

is/are not still committing these acts against me.

D. Defendant(s) discriminated against me based on my *(check all that apply and explain)*:

☐

race

☐

color

☐

gender/sex

☐

religion

☐

national origin

☒

age *(year of birth)*

1960

(only when asserting a claim of age discrimination.)

☐

disability or perceived disability *(specify disability)*

E. The facts of my case are as follows. Attach additional pages if needed.

CONTINUATION SHEET FOR FEDERAL DISTRICT COURT COMPLAINT

III. Statement of Claim (E):

Now the VA's regional office has declined a third opportunity to consider me for hire. This week I contacted Al Hess, the current Officer in charge of VR&E, and asked to be considered for a new 2nd additional Madison position they are attempting to get authorization for. Mr. Hess turned down an offer to meet and showed zero interest in mediation.

The VA pins its defense on the assumption that I will not be able to show I was "more" qualified than the person that David Crosby hired. That remains to be seen. And the VA disregards the following:

"plaintiffs may challenge an overall decision-making process 'if the employer utilizes an undisciplined system of subjective decision making.'"

and

"Relying on *Watson v. Fort Worth Bank and Trust* ... employers are subject to liability under disparate impact analysis for granting supervisors unchecked discretion to engage in subjective decision making because the unchecked discretion allows conscious or unconscious age-based stereotypes to infect the decision making process ..."

and

"... the RFOA defense considers what the employer knew about the harm and what it did to correct it."

At some point the question becomes "How can the VA justify disregarding the option of direct hire three times in a row for a seasoned and proven VA employee with an outstanding performance evaluation? (Especially given that the employee was documented as "Schedule A" and as a hiring preference eligible Veteran)".

V. Relief:

I request a Madison based GS-13 position - or at least a bridge GS-12/13 position starting at the step 5 level. Because Al Hess was unwilling to even meet with me I would be afraid to accept a position that would involve my reporting to him – out of concern of being placed into a hostile work environment. I also request the earnings lost in the interim along with all the funds that should have been invested into my TSP account (including employer matching funds). I request that I not be required to serve a probationary period as I would have completed any probationary period by now. I also ask for all legal costs.

If the VA does not provide such a position I request to be made whole with an amount sufficient to cover the loss of all past and future earnings, TSP funds and an offset sufficient to compensate for the lower pension I would receive for the duration of my life expectancy. Also all legal costs together with the full extent of allowable damages (ex: for negligence in supervision and/or investigation).

The VA did not provide sufficient oversight of the hiring official (David Crosby) and failed to provide a thorough internal EEOC investigation. David Crosby has subsequently been fired for cause and has been charged with crime by one of his former employees (see printout report of criminal charge).

VA HR records show David Crosby established a pattern of hiring younger workers. Despite what the VA claims, David Crosby hired a less qualified person instead of me who was substantially younger. Further, the VA made no effort to mediate this EEOC complaint in good faith - not even when the very same position became available for a second time. See continuation sheet.

(Note: As additional support for the facts of your claim, you may attach to this complaint a copy of your charge filed with the Equal Employment Opportunity Commission, or the charge filed with the relevant state or city human rights division.)

IV. Exhaustion of Federal Administrative Remedies

- A. It is my best recollection that I filed a charge with the Equal Employment Opportunity Commission or my Equal Employment Opportunity counselor regarding the defendant's alleged discriminatory conduct on *(date)*
May 2018

- B. The Equal Employment Opportunity Commission *(check one)*:

☐

has not issued a Notice of Right to Sue letter.

☒

issued a Notice of Right to Sue letter, which I received on *(date)* 11/03/2020

(Note: Attach a copy of the Notice of Right to Sue letter from the Equal Employment Opportunity Commission to this complaint.)

- C. Only litigants alleging age discrimination must answer this question.

Since filing my charge of age discrimination with the Equal Employment Opportunity Commission regarding the defendant's alleged discriminatory conduct *(check one)*:

☒

60 days or more have elapsed.

(SEE B ABOVE)

☐

less than 60 days have elapsed.

V. Relief

State briefly and precisely what damages or other relief the plaintiff asks the court to order. Do not make legal arguments. Include any basis for claiming that the wrongs alleged are continuing at the present time. Include the amounts of any actual damages claimed for the acts alleged and the basis for these amounts. Include any punitive or exemplary damages claimed, the amounts, and the reasons you claim you are entitled to actual or punitive money damages.

I was a GS-11 step 9 at time of interview for the position in Madison, WI. Had David Crosby hired me in April 2018 as a GS-12, as he said he could, it would therefore have been customary to have hired me in as a GS-12 step 4. After two years, in April 2020, I would have received a step increase to GS-12 step 5. By now, with my approximately 20 years of VA vocational experience, I could have filled the currently vacant Assistant Officer position (GS-13). See continuation sheet.

VI. Certification and Closing

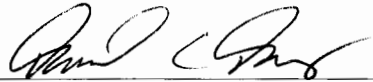
Under Federal Rule of Civil Procedure 11, by signing below, I certify to the best of my knowledge, information, and belief that this complaint: (1) is not being presented for an improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation; (2) is supported by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law; (3) the factual contentions have evidentiary support or, if specifically so identified, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery; and (4) the complaint otherwise complies with the requirements of Rule 11.

A. For Parties Without an Attorney

I agree to provide the Clerk's Office with any changes to my address where case-related papers may be served. I understand that my failure to keep a current address on file with the Clerk's Office may result in the dismissal of my case.

Date of signing: 1/1/2021

Signature of Plaintiff



Printed Name of Plaintiff

David C. Davis

B. For Attorneys

Date of signing: _____

Signature of Attorney

Printed Name of Attorney

Bar Number

Name of Law Firm

Street Address

State and Zip Code

Telephone Number

E-mail Address